

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 20/MP/2017

Subject : Petition under Section 79(1)(c) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Access in inter-State transmission and related matters) Regulations, 2009 and Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010

Date of hearing : 11.5.2017

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Kanti Bijli Utpadan Nigam Limited (KBUNL)

Respondents : Central Transmission Utility and Others

Parties present : Ms. Swapna Seshadri, Advocate, KBUNL
Ms. Saloni Sacheti, Advocate, KBUNL
Shri V.K. Jain, KBUNL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Swapnil Verma, PGCIL
Shri Dilip Rozekar, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri R.B. Sharma, Advocate, WBSEDCL
Ms. Himanshi Andley, Advocate, GRIDCO
Shri R.K. Mehta, Advocate, GRIDCO
Shri S.K. Maharana, GRIDCO
Shri Shankar Saran, NTPC

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the petitioner has filed the present petition *inter alia* seeking directions to the beneficiaries to sign the LTA Agreement. Learned counsel further submitted as under:

a). The sale of power in the case of Central Sector Generating Companies is at the bus bar of the generating station. The title of the power passes to the beneficiaries at the bus bar of the generating station. Thereafter, it is for the beneficiaries to deal with the transmission company to make arrangements for evacuation of power. Generating companies such as the petitioner do not undertake any responsibility qua the transmission, open access, scheduling of power, etc.

Therefore, it does not stand to any reason that the generating company signs the LTA Agreement to get some service from PGCIL. The beneficiaries are expected to deal with both the entities separately.

b). The PPA governs the relationship between the petitioner and the beneficiaries of power. The contractual obligations assumed by the petitioner is consistent with the provisions of the Connectivity Regulations.

c). Learned counsel referred to Regulations 2 (b), 8 and 12 of the Connectivity Regulations and Detailed Procedure amended on 17.2.2016 and submitted that the petitioner was not required to sign the LTA Agreement or assume any obligations under any such agreement. This is clearly the responsibility of the beneficiaries of power. In fact, this was also the understanding of CTU.

d). PGCIL had filed Petition No. 311/MP/2014 seeking directions to the beneficiaries to sign the LTA Agreement and the alternative prayer was to seek a direction to NTPC to sign the same. If the PGCIL's understanding was that the applicant only needs to sign the LTA Agreement and assume all the responsibilities under the same, the prayer of the PGCIL would have only been against NTPC and not against the beneficiaries. Therefore, PGCIL is taking inconsistent stands in different proceedings.

e). PGCIL is mixing up its role in the capacity of a Central Transmission Utility and its commercial interests in recoveries of money due to it as a transmission licensee. This is clear from the fact that PGCIL has brought the issues of payment of transmission charges which is always to a transmission licensee and not to a CTU. CTU also cannot make any prayer in the petition filed by the petitioner seeking payment of LTA charges. It is a well settled principle that a party cannot be put to a worse position by preferring/filing a proceeding before a court of law. In this regard, learned counsel relied upon the judgments of the Hon'ble Supreme Court in Banarsi Vs. Ram Phal [(2003) 9 SCC 606] and ICICI Ltd. Vs. Ahmedabad Mfg. & Calico Printing Co. Ltd. [(2004) 9 SCC 747].

f). No POC charges should be levied to the extent of supply of power by the petitioner's generating station to the beneficiaries in the State of Bihar. Accordingly, in the event of scheduling by RLDC, no POC charges may be levied on Bihar. Similarly, in the event of scheduling by Bihar SLDC, transmission/wheeling losses of Bihar should not be levied on other beneficiaries.

2. In it's rebuttal, learned counsel for PGCIL submitted as under:

a). The modus regarding power supply to the beneficiaries is a contractual arrangement between the petitioner and its beneficiaries, PGCIL has no privity with it nor is bound by the terms thereof. In the matter of grant of connectivity to and access into the ISTS, PGCIL is required to act in accordance with the provisions of the Connectivity Regulations which provide that both the connectivity to the ISTS

and LTA is granted on an application in prescribed format made in that behalf. Upon grant of LTA, the applicant signs the LTA Agreement with PGCIL in accordance with the provisions made in the Detailed Procedure.

b). There is no provision in the Connectivity Regulations that recognizes or validates an application made “on behalf of” another person, be it a beneficiary or otherwise. As per the amendment dated 17.2.2016 made in the Detailed Procedure, the cases where LTA have been applied for and granted to the generator, the onus of making the beneficiaries sign the necessary agreements with PGCIL lies squarely with the generator. The said position has also been notified by the Commission after the passing of order dated 31.1.2013 in Petition No. 133/MP/2012.

c). It is for the petitioner to ensure that its beneficiaries for 121.6 MW sign the necessary agreements with PGCIL so that transmission charges for subject LTA are paid to it, failing which the petitioner is bound and obliged to discharge these obligations “on behalf of” the said beneficiaries.

d). After the grant of LTA neither the petitioner nor its beneficiaries came forward to sign the necessary LTA Agreement with PGCIL. Accordingly, PGCIL vide its various letters requested the petitioner to sign the LTA Agreement. However, no response was received from the petitioner and the beneficiaries in this regard.

3. Learned counsel for GRIDCO submitted that the Govt. of Odisha communicated with MoP for de-allocation of power from the petitioner along with from other generating stations in order to avoid huge financial liability. Thereafter, GRIDCO’s share of 155 MW in Nabinagar Power Station has been reallocated to UP vide MoP Notification dated 6.5.2016. However, such reallocation of surrendered power of Odisha from other generating stations including the petitioner is under active consideration of MoP and likely to be de-allocated. In the absence of even remote chances of Odisha availing the petitioner’s share of power , GRIDCO cannot sign the LTA Agreement.

4. Learned counsel for WBSEDCL submitted that since, GRIDCO has already taken up the matter with concerned authorities for surrender of their share, it has not signed the LTA Agreement. The State of West Bengal and Damodar Valley Corporation (DVC) were also of the same view as that of GRIDCO and informed that they have also separately taken up the matter with competent authority for surrender of their respective shares. Learned counsel further submitted that the allocation of power to WBSEDCL by the MoP as per the allocation letter issued is not absolute but the same is subjected to the PPA which is also further subject to the beneficiaries ensuring compliance with the financial and commercial terms of PPA. Similar conditionality has also been provided in Clause 2.2.2 of the PPA related to the allocation of capacity. Accordingly, the MoP is required to take a view regarding firm allocation from the generating station on the basis of which extension of LTA

could be facilitated. Therefore, the prayer of the petitioner to direct WBSEDCL to sign necessary documents is without any basis.

5. After hearing the learned counsels for the parties, the Commission directed the petitioner to submit reason for applying connectivity and LTA for 126 MW out of total installed capacity of 390 MW and to furnish SLD for the evacuation system of the plant. The Commission further directed ERPC to file its submissions on methodology regarding accounting for such cases. CTU was directed to submit its views on grant of part connectivity and LTA in such cases.

6. The Commission directed the parties to file the desired information and their written submissions on or before 30.6.2017, with an advance copy to each other, failing which the order shall be passed based on the documents available on record.

7. Subject to the above, the Commission reserved the order in the petition.

By order of the Commission
Sd/-
(T. Rout)
Chief (Legal)